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7                   **UNITED STATES DISTRICT COURT**  
8                   EASTERN DISTRICT OF CALIFORNIA  
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10 ELORA ELMER, c/o C.R.F.,

Case No. 1:22-cv-01045-SAB

11                   Plaintiff,

ORDER REQUIRING PLAINTIFF TO FILE  
APPLICATION FOR APPOINTMENT OF  
GUARDIAN AD LITEM

12                   v.

(ECF No. 2)

13 COMMISSIONER OF SOCIAL SECURITY,

TEN DAY DEADLINE

14                   Defendant.

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16         Elora Elmer, on behalf of minor C.R.F., filed this action on August 18, 2022, challenging  
17 a final decision of the Commissioner of Social Security denying an application for disability  
18 benefits. (ECF No. 1.) Plaintiff did not pay the filing fee in this action and instead filed an  
19 application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (ECF No. 2.) On  
20 August 23, 2022, the Court denied the application to proceed *in forma pauperis* and ordered  
21 Plaintiff to file a long form application. (ECF No. 3.) On September 19, 2022, Plaintiff filed a  
22 long form application. (ECF No. 4.)

23         Upon review of the docket, no application for the appointment of guardian ad litem has  
24 been filed. The Court will not rule on the application to proceed *in forma pauperis* until a  
25 guardian has been appointed. See Cottingham for Washington v. Bd. of Educ. of Emery Unified  
26 Sch. Dist., No. C-93-0824-DLJ, 1993 WL 79698, at \*1 (N.D. Cal. Mar. 15, 1993) (quoting  
27 Williams v. Spencer, 455 F.Supp. 205, 209 (D. Md. 1978) (“[W]here leave to proceed In forma  
pauperis is sought to vindicate the alleged substantial rights of a minor, the financial resources of

1 both the minor and of the volunteer parent, next friend, or guardian Ad litem controlling the  
2 litigation should be considered in determining ability to pay the costs of litigation.”)); C.C.R. v.  
3 Comm'r of Soc. Sec., No. 1:21-CV-0640-SAB, 2021 WL 1840942, at \*2 (E.D. Cal. Apr. 19,  
4 2021). Accordingly, the Court shall order Plaintiff to submit an application for the appointment  
5 of a guardian ad litem, and the Court will not rule on the pending application to proceed *in forma*  
6 *pauperis* until it has ruled on the issue of a guardian ad litem.<sup>1</sup>

7 Rule 17 of the Federal Rules of Civil Procedure provides, that a suit by a minor may be  
8 brought or defended by “(A) a general guardian; (B) a committee; (C) a conservator; or (D) a  
9 like fiduciary.” Fed. R. Civ. P. 17(c)(1). A minor who does not have a duly appointed  
10 representative may sue by next friend or a guardian ad litem. Fed. R. Civ. P. 17(c)(2). Further,  
11 the Local Rules of the Eastern District of California state,

12 Upon commencement of an action or upon initial appearance in defense of an  
13 action by or on behalf of a minor or incompetent person, the attorney representing  
14 the minor or incompetent person shall present (1) appropriate evidence of the  
15 appointment of a representative for the minor or incompetent person under state  
16 law or (2) a motion for the appointment of a guardian ad litem by the Court, or,  
17 (3) a showing satisfactory to the Court that no such appointment is necessary to  
ensure adequate representation of the minor or incompetent person. See Fed. R.  
Civ. P. 17(c).

17 L.R. 202(a).

18 Accordingly, IT IS HEREBY ORDERED that within **ten (10) days** from the date of  
19 entry of this order, Plaintiff shall file evidence that the representative has been appointed under  
20 state law or a motion for appointment of a guardian ad litem that meets the requirements of Local  
21 Rule 202.

22 IT IS SO ORDERED.

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24 Dated: September 20, 2022



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UNITED STATES MAGISTRATE JUDGE

<sup>1</sup> The Court notes that the Court has previously admonished this counsel for failing to submit an application for the appointment of a guardian ad litem. See Smith v. Comm'r of Soc. Sec., No. 1:19-cv-00571-SAB (ECF No. 18).